

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff-Appellant,

MACARIO G. YAMAT, JR.,
Defendant-Appellee.

Supreme Court

No. _____

Court of Appeals

No. 257923

Kent County Circuit

Court No. 04-02637-AR

PLAINTIFF-APPELLANT'S

SUPPLEMENTAL BRIEF IN SUPPORT OF

APPLICATION FOR LEAVE TO APPEAL

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TABLE OF CONTENTS

INDEX OF AUTHORITIES	iii
STATEMENT OF APPELLATE JURISDICTION.....	iv
ORDER APPEALED FROM AND RELIEF SOUGHT	v
STATEMENT OF QUESTION PRESENTED	vi
STATEMENT OF MATERIAL PROCEEDINGS AND FACTS.....	1
ARGUMENT	2
The Motor Vehicle Code defines an operator of a motor vehicle as a person who is in physical control of the vehicle. When Defendant grabbed the steering wheel of a moving vehicle from the passenger seat and turned the wheel, causing the vehicle to veer off the road, Defendant was exercising physical control over the vehicle and was therefore operating the vehicle.	2
RELIEF REQUESTED	6

INDEX OF AUTHORITIES

Cases

<i>Commonwealth v Hoover</i> , 161 Pa CmwltH 517; 637 A2d 721 (1994)	4
<i>Gibbs v Nat'l General Insurance Co</i> , 938 SW2d 600 (1997).....	3
<i>People v Crombleholme</i> , 8 AD3d 1068; 778 NYS2d 256 (2004)	4
<i>People v Jones</i> , 467 Mich 301; 651 N.W.2d 906 (2002).....	2
<i>People v Lively</i> , 470 Mich 248; 680 NW2d 878 (2004)	3
<i>People v Perkins</i> , 473 Mich 626; 703 NW2d 448 (2005).....	3
<i>People v Prescott</i> , 95 NY2d 655, 662-663; 722 NYS2d 778; 745 NE2d 1000 (2001)	4
<i>State v Cruz</i> , 121 Or App 241; 855 P2d 191 (1993).....	4
<i>Tryc v Michigan Veterans' Facility</i> , 451 Mich 129; 545 NW2d 642 (1996).....	5

Statutes

§302.010(15), RSMo Supp 1995	3
75 PaCSA §1547(a)	4
MCL 257.35a	2
MCL 257.36	2, 4
ORS 801.100.....	4

STATEMENT OF APPELLATE JURISDICTION

The People seek leave to appeal from the decision of the Court of Appeals pursuant to MCR 7.301(A)(2).

ORDER APPEALED FROM AND RELIEF SOUGHT

The People seek leave to appeal from a published decision of the Court of Appeals issued on March 24, 2004, Docket No. 257923. In that decision, the Court of Appeals held that the lower courts properly dismissed a charge of Felonious Driving¹ against Defendant Macario Yamat. The Court of Appeals affirmed the holdings of the District and Circuit Courts, which found that the actions alleged to have been committed by Defendant – grabbing the steering wheel of a moving car from the passenger seat and causing the car to swerve and injure a pedestrian – did not constitute “operating” the vehicle and did not fall within the proscription of the Felonious Driving statute. The Court of Appeals decided the case without the benefit of oral argument, pursuant to MCR 7.214(E).

The People seek leave to appeal this issue to this Honorable Court or, in the alternative, peremptory reversal of the Court of Appeals decision.

¹ MCL 257.626c

STATEMENT OF QUESTION PRESENTED

The Motor Vehicle Code defines an operator of a motor vehicle as a person who is in physical control of the vehicle. When Defendant grabbed the steering wheel of a moving vehicle from the passenger seat and turned the wheel, causing the vehicle to veer off the road, was Defendant exercising physical control over the vehicle and therefore operating the vehicle?

The trial court answered “No.”

The Circuit Court answered “No.”

The Court of Appeals answered “No.”

Plaintiff-Appellant answers “Yes.”

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

The People incorporate the Statement of Material Proceedings and Facts set forth in our Application for Leave to Appeal.

ARGUMENT

THE MOTOR VEHICLE CODE DEFINES AN OPERATOR OF A MOTOR VEHICLE AS A PERSON WHO IS IN PHYSICAL CONTROL OF THE VEHICLE. WHEN DEFENDANT GRABBED THE STEERING WHEEL OF A MOVING VEHICLE FROM THE PASSENGER SEAT AND TURNED THE WHEEL, CAUSING THE VEHICLE TO VEER OFF THE ROAD, DEFENDANT WAS EXERCISING PHYSICAL CONTROL OVER THE VEHICLE AND WAS THEREFORE OPERATING THE VEHICLE.

Standard of Review: The construction of a statute is a matter of law subject to *de novo* review. *People v Jones*, 467 Mich 301, 304; 651 NW2d 906 (2002).

Discussion: This case presents an issue of first impression in this Court regarding the construction of the term “operation” of a motor vehicle in the context of the Felonious Driving statute. The issue presented is whether a passenger who grabs and turns the steering wheel of a moving vehicle is in physical control of the vehicle and therefore an “operator” of the vehicle for purposes of the Felonious Driving statute, MCL 257.626c.

The Felonious Driving statute states that

A person who **operates** a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property resulting in a serious impairment of a body function of a person, but does not cause death, is guilty of felonious driving . . .
[Emphasis added.]

The Motor Vehicle Code, chapter 257 of the Michigan Compiled Laws, contains an express definition of the term “operate.” MCL 257.35a defines “operate” as “being in actual physical control of a vehicle . . .” Similarly, MCL 257.36 defines “operator” as “every person, other than a chauffeur, who is in actual physical control of a motor vehicle.” In the present case, Defendant

exerted “actual physical control” over the vehicle when he grabbed the steering wheel from the passenger seat, and therefore “operated” the vehicle within the statutory definitions. Because he operated the vehicle in a manner that wantonly disregarded the safety of other and resulted in serious injury to a pedestrian, Defendant was properly charged with Felonious Driving, and the District Court erred in dismissing the charge against Defendant.

In our application for leave to appeal, the People argue that the plain language of the statute supports the conclusion that Defendant in the present case was operating the vehicle. Because the issue before the Court is the interpretation of a Michigan statute, authorities interpreting statutes from other states are not controlling. However, the Court may find such authorities instructive to its analysis, particularly if the language of the other state’s statute is similar to the language of Michigan’s statute. *See, e.g., People v Perkins*, 473 Mich 626, 639 n 16; 703 NW2d 448 (2005); *People v Lively*, 470 Mich 248, 256 n 10; 680 NW2d 878 (2004). The People have located a number of decisions from other states which have addressed the question of whether a passenger who grabs the steering wheel of a moving vehicle may be found to be an operator of that vehicle. These cases were not discussed in our Application for Leave to Appeal. The Court having ordered oral argument on the application for leave and invited supplemental briefing, we will present these out-of-state authorities for the Court’s consideration.

In *Gibbs v Nat’l General Insurance Co*, 938 SW2d 600 (1997), the Missouri Court of Appeals interpreted a Missouri statute which defines the “operator” of a motor vehicle in a manner identical to the definition in the Michigan statute: “every person who is in actual physical control of a motor vehicle” §302.010(15), RSMo Supp 1995. *Gibbs*, like the present case, involved a passenger who grabbed the steering wheel of a moving vehicle and caused the vehicle to veer, resulting in an accident and injury to another person. While the *Gibbs*

case involved questions of insurance coverage, the Court was interpreting the scope of Missouri's uninsured motorist statute and the statutory definitions related to "operation" of a motor vehicle. 938 SW2d at 603-604. The Court concluded that the passenger who grabbed the steering wheel in that case was operating the vehicle within the meaning of the statutory definition. As noted above, that definition is identical to the definition contained in MCL 275.36. While not controlling as to this Court's construction of MCL 257.36, the fact that an identical statutory provision has been interpreted to include the act of a passenger grabbing the steering wheel supports the People's position that the plain language of the statute includes such conduct.

Courts in a number of states have held that the conduct at issue here can constitute operation of a motor vehicle within the meaning of criminal statutes. The Oregon Court of Appeals has held that a passenger who, while intoxicated, grabs the steering wheel of a moving vehicle is operating the vehicle and may be convicted of drunk driving. *State v Cruz*, 121 Or App 241; 855 P2d 191 (1993). The Oregon statute at issue defined "operation" as "any operation, towing, pushing, movement or otherwise propelling" of a vehicle. ORS 801.100. New York courts have also found such conduct to be sufficient to support a conviction for driving while impaired. *People v Crombleholme*, 8 AD3d 1068; 778 NYS2d 256 (2004). The New York impaired driving statute did not contain an express definition of the term "operate;" the court in *Crombleholme* applied earlier case law which held that "[a] person operates a motor vehicle within the meaning of [the impaired driving statute] when, in the vehicle, he intentionally does any act or makes use of any mechanical or electrical agency which alone or in sequence will set in motion the motive power of the vehicle." *People v Prescott*, 95 NY2d 655, 662-663; 722 NYS2d 778; 745 NE2d 1000 (2001). In *Commonwealth v Hoover*, 161 Pa Cmwlt 517; 637

A2d 721 (1994), the Commonwealth Court of Pennsylvania held that a passenger who grabbed the steering wheel of a moving vehicle was “operating” the vehicle for the purposes of Pennsylvania’s implied consent law. The statute at issue in that case defined an “operator” of a vehicle as “any person who drives, operates or is in actual physical control of the movement of a motor vehicle.” 75 PaCSA §1547(a). The Court held that the Pennsylvania Department of Transportation properly suspended the driving privileges of the individual who grabbed the steering wheel from the passenger seat when that person refused to submit to chemical testing by a police officer pursuant to the implied consent law. While the statutes of these jurisdictions define “operation” in different terms than does the Michigan statute, they demonstrate that courts have found the conduct at issue sufficient to support criminal liability.

This Court’s task in the present case is to give effect to the plain language of the Felonious Driving statute and to the Legislature’s express definition of the term “operate” as used within the Motor Vehicle Code. If the plain language of the statutes is unambiguous, no further judicial construction is necessary or appropriate. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996) As discussed in our Application for Leave to Appeal, it is the People’s position that the statutory definitions are not ambiguous, and that the conduct of the defendant in the present case falls within the plain language of the statute. In the event that this Court should disagree and find the statutory provisions to be ambiguous and subject to further construction, the out-of-state authorities discussed above are offered in the interest of providing the broadest possible context for the Court’s analysis.

RELIEF REQUESTED

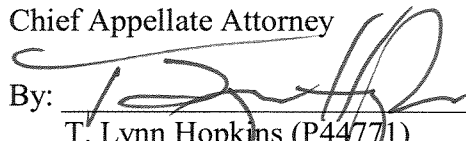
WHEREFORE, for the reasons stated herein, the People respectfully pray that the this Court grant leave to appeal or, in the alternative, peremptorily REVERSE the decision of the Court of Appeals affirming the dismissal of the charges against Defendant, and order that the charge of Felonious Driving be reinstated.

Respectfully submitted,

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Dated: October 13, 2005

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